

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77-6051

To be argued by
Myron J. Meadow

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MUREL H. BRANCH

Plaintiff-Appellant,

v.

SOCIAL SECURITY ADMINISTRATION/SUPPLEMENTAL
SECURITY INCOME/1657 Broadway, New York City,
and M. STAMLER, B. JUNGMAN, W. LINDEN, W. ROHRS,
et al.,

Defendants-Appellees

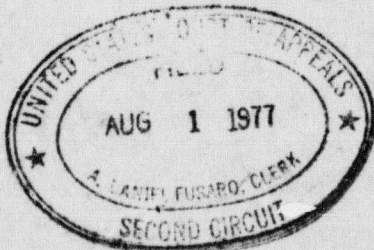
-and-

THE SALVATION ARMY, THE ANTHONY RESIDENCE,
119 East 29th Street, New York City, and
HOWARD DANIELS, and CANDACE DZIUBA,

Defendants-Appellees

ON APPEAL FROM ORDER OF
THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLEES
THE SALVATION ARMY, HOWARD DANIELS,
and CANDACE DZIUBA



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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.....	ii
Statement of Issue.....	1
Statement of Case.....	2
Complaint and Amended Complaint.....	4
The Powell Affidavit.....	7
Argument - Dismissal of the Amended Complaint Under Rule 12(b)(6) as against Defendants Salvation Army, Howards Daniels, and Candace Dzuiba Was Proper.....	8
Conclusion.....	12

TABLE OF AUTHORITIES

<u>Conley v. Gibson</u> , 355 U.S. 41, 45-46 (1957).....	10
<u>Dunleavy v. Ternullo</u> , 410 F. Supp. 1166, 1169 (S.D.N.Y. 1976).....	11
<u>Haines v. Kerner</u> , 404 U.S. 519, 520 (1974).....	10
<u>Hiland Dairy, Inc. v. Kroger Co.</u> , 402 F.2d 968, 973 (8th Cir. 1968), <u>cert. denied</u> , 395 U.S. 961 (1969).....	10
<u>Jackson v. Statler Foundation</u> , 496 F.2d 623 (2d Cir. 1974).....	10
<u>Scheuer v. Rhodes</u> , 416 U.S. 232 (1974).....	10
<u>Walker Process Equip. v. Food Mach. & Chem. Corp.</u> , 382 U.S. 172, (1965).....	9

* * *

Statutes and Rules

28 U.S.C. §2671 et seq.....	3
42 U.S.C. §1381 et seq.....	2
Federal Rules of Civil Procedure	
Rule 12(b)(6).....	2,3,9

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STATEMENT OF ISSUE

Murel H. Branch ("appellant") appeals from a decision and order of the United States District Court for the Southern District of New York (Stewart, Charles E., J.,) dated November

22, 1976, reconsidered and reaffirmed December 17, 1976, dismissing appellant's complaint for all defendants under Rule 12(b) of the Federal Rules of Civil Procedure. The Salvation Army, Howard Daniels and Candace Dziuba (hereinafter referred to as the "non-federal defendants") submit this brief in support of the affirmance of decision and order.

The sole issue on appeal is: Did the District Court properly dismiss the amended complaint?*

STATEMENT OF THE CASE

Appellant instituted this action against the Social Security Administration ("SSA") and several named employees of SSA (hereinafter collectively referred to as the "federal defendants") and the Salvation Army and several named employees ("non-federal defendants") challenging the alleged suspension of her Federal Supplemental Security Income ("SSI") benefits pursuant to 42 U.S.C. §1381 et seq. Appellant also alleges that several SSA employees who questioned her at various interviews damaged her "reputation"

* This brief is limited to the question of whether or not the complaint was properly dismissed as against the non-federal defendants.

and presumably is attempting to sue for damages pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671 et seq. Appellant also complains that the non-federal defendants have "interfered" in some yet undefined manner, with appellant's dealings with SSA in pursuit of her SSI benefits. Appellant was a resident at the Anthony Residence, a facility maintained and operated by The Salvation Army at 119 East 29th Street in Manhattan. The Residence is a dwelling residence for single women who have need for such an accomodation in the City of New York which provides room and board, all meals, security and social services. The residents pay a monthly amount for the foregoing accomodations, meals and services. The individual non-federal defendants are, respectively, the Administrator of the Anthony Residence and a social worker thereat.

Both the federal and the non-federal defendants moved to dismiss appellant's amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.*

* Rule 12(b) provides, in pertinent parts, as follows:

"(b) HOW PRESENTED. Every defense, in law or fact, to a claim for relief in any pleading, ... shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: ... (6) failure to state a claim upon which relief can be granted ..."

Federal Rules of Civil Procedure.

The District Court granted motions to dismiss as to both the federal and the non-federal defendants.* Upon what the District Court perceived as a motion for reconsideration by the Appellant, the District Court granted the motion for reconsideration, and upon reconsideration adhered to its original determination.** Appellant now appeals from the District Court's order.

PLAINTIFF'S COMPLAINT AND
"AMENDED COMPLAINT"

Both the complaint and amended complaint narrate appellant's version of dealings and problems with the Social Security Administration. Virtually no allegations are made respecting the non-federal defendants which can be perceived as actionable conduct on their part. What we have here is, in essence, an action predicated upon an allegedly wrongful suspension of supplemental social security benefits by defendant Social Security Administration.*** In the original complaint

* Branch v. Social Security Administration, et al., 76 Civ. 698 (S.D.N.Y., order filed Nov. 22, 1976).

** 76 C.v. 698 (S.D.N.Y., order filed Dec. 21, 1976).

*** Appellant's regular social security benefits continued without interruption; nevertheless, nothing was paid to the Salvation Army though appellant continued to enjoy occupancy of her room, three meals a day and auxiliary services available to all other residents at the Anthony Residence.

the conduct alleged on the part of one non-federal defendant, i.e., Candace Dziuba, is that as a Salvation Army social worker this defendant set up an appointment with the SSI supervisor and accompanied appellant to the subsequent meeting. It is also alleged that the then administrator of the Salvation Army residence where appellant resided asked for rent. The concluding portion of her complaint labeled "Summary" but analogous to an ad damnum, or prayer for relief, is as follows:

"Plaintiff initiates this action because she feels that Supplementary Security Income agents have placed the plaintiff in a position damaging to her character and reputation; and that

a) Plaintiff has unfairly been put in jeopardy for non-payment of rent for a period of eight months:

b) By reason of suspension of monthly SSI checks beginning May 1, 1975; and

c) By reason of inadequate SSA checks which do not apply to current month for which rent becomes due on the first of each month.

d) Plaintiff believes that suspension of SSI payments to her by SSI Notice of Decision mailed to her in April 1975 is contrary to a ruling by the United States Supreme Court that SSI checks cannot be stopped before a hearing is held.

e) Plaintiff believes that the manner of speaking used by the several interviews [by SSA personnel] toward her was intended to provoke and arouse argument and fear in plaintiff by the implication that plaintiff had intent to defraud by concealment and lack of cooperation.

f) Plaintiff believes that such allegations are unjustified and without foundation, and that such allegations presume guilt in advance of evidentiary intent.

THEREFORE, Plaintiff petitions the United States District Court for the Southern District of New York to permit this complaint to proceed for reasons set forth herein, and for redress of injurious allegations described.

LASTLY, Plaintiff wishes in this action to straighten out all discrepancies and implications that derogate her character." (underscoring added)

The "Summary" portion of her "Amended Complaint" states:

"PLAINTIFF petitions the Court to consider her request for this addition to her original complaint, as being necessary to a clear understanding of the factors involved.

PLAINTIFF believes that the continually increased pressures being put upon her by reason of SSI actions and their insistence upon the Anthony Residence - it is known to PLAINTIFF that there is, and has been, frequent discussion between liason people in both - constitute a detriment to her well-being and a considerable jeopardy by reflections upon her character.

PLAINTIFF believes that the allegations and charges against her, of theft, fraud, concealment, resources, funds from others, and other implications, should be proven by the accusers beyond any reasonable doubt, and that a legal decision by the Court should clear up any questions remaining unanswered.

PLAINTIFF testifies that she is the only person who knows, or can know, what she has done or tried to do in this matter, and than she speaks entirely for herself within her knowledge of the truth as she see it."

All that is alleged in the amended complaint is a discussion between appellant and defendant Major Daniels, the residence's administrator, wherein rent was demanded and a vacatur of the

premises occupied by her was requested if rent remained unpaid.

None of the foregoing, we submit, remotely makes out a cognizable cause of action against the non-federal defendants. Appellant herself apparently recognizes this in her motion to disqualify Judge Stewart (pp. 1,2) in characterizing these defendants as "secondary defendants" and "accessory after the fact." (underscoring supplied)*

THE POWELL AFFIDAVIT

As part of the federal defendants' moving papers the affidavit of Barry L. Powell, Officer in Charge of the Operating Policy and Standards Staff of the Bureau of Supplemental Security Income, Social Security Administration was submitted. This Affidavit contains a review of appellant's social security history and status.

It was the receipt by appellant of a retroactive check for \$9,727. from the Social Security Administration that triggered appellant's apparent ineligibility for supplemental benefits. Obviously, the non-federal defendants have nothing to do with appellant's receipt or suspension of benefits; on the contrary, it would have redounded to Salvation Army's benefit if appellant received such benefits.

* In the appellant's styling of the caption or title of this action the non-federal defendants are even set apart from the federal defendants.

The Powell Affidavit significantly concludes:

"Ms. Branch has the right, if she timely requests it, to have her payments continued until she has received notice of a reconsidered determination. She also has the right to waive continuation of payments. Her statement of 1/12/75 was construed as a waiver of continuation of payments. However, if she now wishes to revoke her waiver, the Bureau of Supplemental Security Income is prepared to issue to Ms. Branch, retroactive SSI benefits for the months of May through November at the rate of \$375.00 per month. Should it be determined that Ms. Branch is not eligible for SSI payments for these months, the issuance of benefits for these months will result in an overpayment in addition to any overpayment she may have already received." Powell Affidavit, Apr. 22, 1976, par. 11, pp. 5,6.

Appellant did not avail herself of the option to get retroactive SSI benefits. Appellant failed to attend a hearing on several adjourned dates to examine into her eligibility, her refusal being based on the pendency of this action.

Interestingly, in response to Mr. Powell's affidavit appellant stated, among other things:

"It is a grave injustice to The Salvation Army to be forced into a position where nonpayment of rent is caused by intentional withholding of funds from one in whose name the rent is supposed to be paid." Appellant's Response to Powell Affidavit, May 15, 1976, p.3.

ARGUMENT

THE DISMISSAL OF THE COMPLAINT
AS AGAINST THE NON-FEDERAL DE-
FENDANTS WAS PROPER.

Appellant's delineation of the issue in her action as set forth in her brief to this Court clearly indicates that the non-federal defendants have no place in this action. In appellant's

Introduction preceding page 1 of her brief she states:

"As stated in preceding documents filed with the United States Courts, Appellant feels that accusations, direct as well as implied, by interviewers in the office of the Supplemental Security Income Bureau at 1657 Broadway, New York City, have all too hastily assumed that that [sic] she intended to defraud the Government."

She further states (page 20):

"It seemed inadvisable to Appellant that there should be more than one legal action at the same time on what was essentially one issue, i.e., the supplemental security income payments as related to the accusations of fraud set up by the SSI interviewers, when the issue had already been outlined in documents filed in the District Court well in advance of any evidence to the Appellant that a hearing was likely to be considered."

Further, on page 40, she states:

"The entire case is based on SSI, including the matter of hearing."

Thus, the grant of the non-federal defendants' dismissal motion by the Court below was correct. A motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure admits the well-pleaded facts of the complaint as true but denies the legal sufficiency of the claim under the facts pleaded. Walker Process Equip. v. Food Mach. & Chem. Corp., 382 U.S. 172, 174-75 (1965).

As the Supreme Court has stated, in an oft-quoted passage,

"In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957).

Although the allegations in the complaint should be construed with every doubt resolved in favor of the pleader, Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Conley v. Gibson, 355 U.S. 41, 45-46 (1957); "the court does not have to accept every allegation in the complaint as true in considering its sufficiency." 5 Wright & Miller, Federal Practice & Procedure §1357 at 594-95 (1969). Sweeping and unsupported conclusions, deductions or inferences need not be considered in every instance. Id. See, e.g., Hiland Dairy, Inc. v. Kroger Co., 402 F.2d 968, 973 (8th Cir. 1968), cert. denied, 395 U.S. 961 (1969). Moreover, none of the additional material beyond the pleadings which was submitted by appellant for consideration by the court below served to create a viable claim against the non-federal defendants.

The courts have understandably recognized that pro se complaints are less stringently scrutinized than attorney-drafted pleadings. Haines v. Kerner, 404 U.S. 519, 520 (1974) (per curiam). See, e.g. Jackson v. Statler Foundation, 496

F.2d 623, 625-26 (2nd Cir. 1974); Dunleavy v. Ternullo, 410 F. Supp. 1166, 1169 (S.D.N.Y. 1976). Therefore, viewing the appellant's complaint from the most favorable perspective, and accepting her material allegations as true, the issue is whether appellant's complaint fails to state a cause of action on which relief can be granted.

Despite the myriad of "factual" allegations asserted by appellant, the allegations against the non-federal defendants fall far short of stating a legally cognizable cause of action. Appellant seems to say that the non-federal defendants were in some sort of liason arrangement with SSA and aided, in some yet undemonstrated manner, the federal defendants in allegedly denying appellant SSI benefits. In fact, it was only to the potential benefit of the non-federal defendants for the appellant to receive her allegedly due SSI benefits as the appellant was considerably in arrears on rent due the Salvation Army for her room at the Anthony Residence. Arguendo, even if some interference did occur, such fact does not raise even an inference of any legally cognizable claim against the non-federal defendants. The Salvation Army and its named employees should not be a party to this action. All of the facts alleged by the Appellant against the non-federal defendants do not, even if taken as true, show a violation of the appellant's rights and interests. The complaint allegations, in short, lack any claim for relief against the non-federal defendants even when coupled

with all the other material submitted to the court below.

CONCLUSION

The District Court's order dismissing appellant's complaint against the non-federal defendants is more than warranted by the record and should be affirmed in all respects.

Respectfully submitted,

WEIL, GOTSHAL & MANGES
Attorneys for Defendants-
Appellees
The Salvation Army,
Howard Daniels and
Candace Dziuba

Myron J. Meadow,
Of Counsel

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss:

DEARIE TUCKER being sworn says: I am not a party to the action, am over 18 years of age and reside at Brooklyn, New York 11226.

On July 29, 1977, I served two true copies each of the annexed Brief for Defendants-Appellees The Salvation Army, Howard Daniels, and Candace Dziuba in the following manner: by mailing the same in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service with the State of New York, addressed to the addressees as indicated below:

Ms. Murel H. Branch
P.O. Box 99
New York, New York 10024

Honorable Robert Fiske, Jr.
U.S. Attorney
Southern District, New York
U.S. Courthouse Annex
1 St. Andrews Plaza
New York, New York 10007

Attention: Nathaniel L. Gerber, Esq.
Assistant U.S. Attorney

Dearie Tucker
DEARIE TUCKER

Sworn to before me on
August 1, 1977.

Miguel James Meadow

MIGUEL JAMES MEADOW
Notary Public, State of New York
No. 60-7877925
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1978

